

## TITLE 329 SOLID WASTE MANAGEMENT BOARD

### 2011 Hazardous Waste Update

#### Draft Rule as Proposed for Preliminary Adoption

LSA Document #11-90

#### Digest

Amends 329 IAC 3.1-1-7, 329 IAC 3.1-5-2, 329 IAC 3.1-6-2, and 327 IAC 3.1-12-2 to: 1) incorporate by reference 40 CFR 261 Appendix IX to describe hazardous wastes excluded from regulation under 40 CFR 261.20 and 40 CFR 261.22; 2) remove the emission-comparable fuel exclusion; 3) amend the delisting exclusion in 40 CFR 261, Appendix IX for the American Steel Cord facility in Scottsburg, Indiana to reflect changes in ownership and name to Tokusen U.S.A., Inc; 4) remove saccharin and its salts (waste code U202) from the lists of hazardous wastes and hazardous constituents; and 5) make technical corrections to the alternative requirements for hazardous waste determination and accumulation of unwanted materials at laboratories owned by colleges and universities and other eligible academic entities formally affiliated with colleges and universities. Effective 30 days after filing with the Publisher.

#### HISTORY

First Notice of Comment Period: March 2, 2011, Indiana Register (DIN: 20110302-IR-329110090FNA).

Second Notice of Comment Period: May 11, 2011, Indiana Register (DIN: 20110511-IR-329110090SNA).

#### DRAFT RULE

SECTION 1. 329 IAC 3.1-1-7 IS AMENDED TO READ AS FOLLOWS:

#### **329 IAC 3.1-1-7 Incorporation by reference**

**Authority: IC 13-19-3-1; IC 13-22-4**

**Affected: IC 13-14-8; 40 CFR 260.11**

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of July 1, 2008, and amended as published in the Federal Register on:

- (1) December 1, 2008, at 73 FR 72954 through 73 FR 72960;
- (2) June 15, 2010, at 75 FR 33716 through 75 FR 33724;
- (3) September 22, 2010, at 75 FR 75687 through 75 FR 75688;
- (4) December 17, 2010, at 75 FR 78926; and
- (5) December 20, 2010, at 75 FR 79308.

(b) When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11.

(c) The following publications are also incorporated by reference:

- (1) 40 CFR 146, revised as of July 1, 2005.
- (2) 40 CFR 60, Appendix A-1, revised as of July 1, 2005.
- (3) 40 CFR 60, Appendix A-2, revised as of July 1, 2005.

- (4) 40 CFR 60, Appendix A-3, revised as of July 1, 2005.
- (5) 40 CFR 60, Appendix A-4, revised as of July 1, 2005.
- (6) 40 CFR 60, Appendix A-5, revised as of July 1, 2005.
- (7) 40 CFR 60, Appendix A-6, revised as of July 1, 2005.
- (8) 40 CFR 60, Appendix A-7, revised as of July 1, 2005.
- (9) 40 CFR 60, Appendix A-8, revised as of July 1, 2005.

(d) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsections (a) through (c). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or online at <http://bookstore.gpo.gov/>. The telephone number for the Superintendent of Documents is (202) 512-1800 or toll-free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

(e) Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

(f) Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

(g) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions that may be effective in Indiana that are not incorporated in this article or are retained as federal authority.

*(Solid Waste Management Board; 329 IAC 3.1-1-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2661; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA, eff Sep 5, 2006; filed Dec 26, 2007, 1:44 p.m.: 20080123-IR-329060556FRA; filed Sep 11, 2009, 2:39 p.m.: 20091007-IR-329080673FRA; filed Aug 27, 2010, 11:54 a.m.: 20100922-IR-329090613FRA)*

## SECTION 2. 329 IAC 3.1-5-2 IS AMENDED TO READ AS FOLLOWS:

### **329 IAC 3.1-5-2 Petitions for delisting; petitions for equivalent testing or analytical methods**

**Authority:** IC 13-14-1; IC 13-14-8; IC 13-22-2-3; IC 13-22-2-4

**Affected:** IC 13-14-8-5; IC 13-14-9; 40 CFR 260.20; 40 CFR 260.21

Sec. 2. (a) Any person may petition the commissioner to exclude a waste or waste derived material at a particular facility from 40 CFR 261.3 or 40 CFR 261, Subpart D, as incorporated by this article. In addition to the general petition requirements in this section, a petition must include the additional requirements of section 3 of this rule.

(b) Each petition must be submitted to the commissioner by certified mail and must include:

- (1) the petitioner's name and address;
- (2) a statement of the petitioner's interest in the proposed action;
- (3) a description of the proposed action, including suggested rule language where appropriate; and
- (4) a statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(c) The commissioner will make a tentative recommendation for rulemaking to grant or deny a petition and will publish notice of such tentative recommendation in the Indiana Register for written public comment as provided in IC 13-14-9.

(d) Upon the written request of any interested person, the commissioner may hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The commissioner may in any case decide to hold an informal public hearing.

(e) After evaluating all public comments, the commissioner will publish notice of the recommendation for rulemaking to grant or deny the petition in the Indiana Register as provided in IC 13-14-9.

(f) As provided in IC 13-14-8-5, any person may present a proposal to exclude a waste at a particular facility from 40 CFR 261.3 or 40 CFR 261, Subpart D, as incorporated by this article. In addition to the requirements of IC 13-14-8-5, a proposal must include the additional requirements of section 3 of this rule.

**(g) Where the administrator of the EPA has:**

**(1) excluded a waste at a particular facility from regulation under 40 CFR 260 through 40 CFR 273; and**

**(2) described that waste and the conditions under which that waste is excluded in 40 CFR 261, Appendix IX;**

**that waste is no longer a hazardous waste as long as the conditions for exclusion of the waste described in 40 CFR 261, Appendix IX are met.**

~~(g)~~ **(h)** Where the administrator of the EPA has granted a general rulemaking petition or a petition for equivalent testing or analytical method pursuant to 40 CFR 260.20 and 40 CFR 260.21, the board may, at its discretion, accept such determination and amend this article accordingly provided that the petitioner can furnish appropriate evidence of the administrator's actions and the board determines that granting such a petition is consistent with policies outlined in IC 13-14.

*(Solid Waste Management Board; 329 IAC 3.1-5-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2740, eff Jul 1, 1999; errata filed May 11, 1998, 2:10 p.m.: 21 IR 3367; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 3. 329 IAC 3.1-6-2 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-6-2 Exceptions and additions; identification and listing of hazardous waste**

**Authority: IC 13-14-8; IC 13-22-2-4**

**Affected: IC 13-11-2-99; IC 13-11-2-205; IC 13-11-2-245; IC 13-11-2-266; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; P.L.231-2003, SECTION 6; 40 CFR 261**

Sec. 2. Exceptions and additions to federal standards for identification and listing of hazardous waste are as follows:

(1) This rule identifies only some of the materials that are solid waste as defined by IC 13-11-2-205(a) and hazardous waste as defined by IC 13-11-2-99(a), including IC 13-22-2-3(b). A material that is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if, in the case of:

(A) IC 13-14-2-2, the commissioner has reason to believe that the material may be a solid waste within the meaning of IC 13-11-2-205(a) and a hazardous waste within the meaning of IC 13-11-2-99(a); or

(B) IC 13-14-10-1, the statutory elements are established.

(2) Delete 40 CFR 261.2(f) and substitute the following: Respondents in actions to enforce regulations implementing IC 13 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. An example of appropriate documentation is a contract showing that a second person uses the material as an ingredient in a production process. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(3) References to the "administrator" in 40 CFR 261.10 through 40 CFR 261.11 means the SWMB.

(4) In addition to the requirements outlined in 40 CFR 261.6(c)(2), owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to 40 CFR 265.10 through 40 CFR 265.77.

(5) In addition to the listing of federal hazardous waste incorporated by reference in section 1 of this rule, the wastes listed in section 3 of this rule are added to the listing.

(6) In 40 CFR 261.4(e)(3)(iii), delete the words "in the Region where the sample is collected".

~~(7) Delete 40 CFR 261, Appendix IX.~~

~~(8)~~ **(7)** In 40 CFR 261.21(a)(3), delete "an ignitable compressed gas as defined in 49 CFR 173.300" and substitute "a flammable gas as defined in 49 CFR 173.115(a)".

~~(9)~~ **(8)** In 40 CFR 261.21(a)(4), delete "an oxidizer as defined in 49 CFR 173.151" and substitute "an oxidizer as defined in 49 CFR 173.127".

~~(10)~~ **(9)** Delete 40 CFR 261.23(a)(8) and substitute "It is a forbidden explosive as defined in 49 CFR 173.54; or would have been a Class A explosive as defined in 49 CFR 173.54 prior to HM-181, or a Class B explosive as defined in 49 CFR 173.88 prior to HM-181.".

~~(11)~~ **(10)** Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).

~~(12)~~ **(11)** Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.

~~(13)~~ **(12)** Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.

~~(14)~~ **(13)** Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.

~~(15)~~ **(14)** Delete 40 CFR 261.2(e)(1)(i) dealing with use or reuse of secondary materials to make products and substitute section 5 of this rule.

~~(16)~~ **(15)** In 40 CFR 261.5(j), delete "if it is destined to be burned for energy recovery" in two (2) places.

~~(17) The conditional exclusions from the definition of solid waste for some zinc fertilizers made from recycled hazardous secondary materials in 40 CFR 261.4(a)(20) and 40 CFR 261.4(a)(21) do not apply to any of the following industries until July 1, 2005:~~

Industry	Standard Industry Classification Code
Blast furnaces and steel mills	3312
Gray and ductile iron foundries	3321
Malleable iron foundries	3322
Steel investment foundries	3324
Steel foundries	3325
Aluminum foundries	3365
Copper foundries	3366
Nonferrous foundries	3369

**(16) In 40 CFR 261.33, remove the entries for the U202 hazardous waste code in the table in paragraph (f).**

**(17)** In addition to the solid wastes excluded in 40 CFR 261.4(b), electronic waste or e-waste is excluded, which is any of the following or has the following component:

- (A) A circuit board, including a shredded circuit board.
- (B) A diode.
- (C) A CRT.
- (D) A computer.
- (E) An electronic device.

E-waste does not include vehicles, as defined by IC 13-11-2-245, or white goods, as defined by IC 13-11-2-266. Electronic waste is regulated under 329 IAC 16 and must comply with all applicable standards and requirements under 329 IAC 16.

**(18) In 40 CFR 261, Appendix VIII, remove the entries for "Saccharine" and "Saccharin salts" from the table "Hazardous Constituents".**

**(19) Delete 40 CFR 261.38 as published in the July 1, 2008, edition and substitute the revised text of 40 CFR 261.38 as published at 75 FR 33716 through 75 FR 33724, June 15, 2010.**

*(Solid Waste Management Board; 329 IAC 3.1-6-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2662; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA)*

SECTION 4. 329 IAC 3.1-12-2 IS AMENDED TO READ AS FOLLOWS:

#### **329 IAC 3.1-12-2 Exceptions and additions; land disposal restrictions**

**Authority: IC 13-14-8; IC 13-22-2-4**

**Affected: IC 13-11-2-155; IC 13-22-2; 40 CFR 268**

Sec. 2. Exceptions and additions to land disposal restrictions are as follows:

(1) Primacy for granting exemptions from land disposal restrictions incorporated in this rule are retained as federal authorities and must be granted by the administrator of the EPA. Exemptions for which federal primacy is retained are described as follows:

- (A) Case-by-case extensions to federal effective dates pursuant to 40 CFR 268.5.
- (B) Petitions to allow land disposal of a waste prohibited under 40 CFR 268, Subpart C, pursuant to 40 CFR 268.6.
- (C) Approval of alternate treatment methods pursuant to 40 CFR 268.42(b).
- (D) Exemption from a treatment standard pursuant to 40 CFR 268.44.

(2) For the reason described in subdivision (1), delete the following:

- (A) 40 CFR 268.5.
- (B) 40 CFR 268.6.
- (C) 40 CFR 268.42(b).
- (D) 40 CFR 268.44.

(3) Any person requesting an exemption described in subdivision (1) must comply with 329 IAC 3.1-5-6.

(4) Delete 40 CFR 268.1(e)(3) and substitute the following: Hazardous wastes which are not identified or listed in 40 CFR 268, Subpart C or Subpart D, as incorporated in this rule.

(5) Delete 40 CFR 268.2(e) and substitute the following: Polychlorinated biphenyls or PCBs have the meaning set forth in IC 13-11-2-155.

(6) Delete 40 CFR 268.9(d) and substitute the following: Wastes that exhibit a characteristic are also subject to the requirements of 40 CFR 268.7, except that once the waste is no longer hazardous, a one (1) time notification and certification must be placed in the generator's or treater's files and sent to the commissioner. The notification must include the following information:

(A) The name and address of the solid waste facility receiving the waste shipment.

(B) A description of the waste as initially generated, including the applicable EPA hazardous waste number.

(C) The treatment standards applicable to the waste at the initial point of generation.

(D) The certification must be signed by an authorized representative and must state the language found in 40 CFR 268.7(b)(4).

The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes or if the facility receiving the waste changes.

(7) Delete 40 CFR 268, Subpart B.

(8) In 40 CFR 268, Subpart C, all references to effective dates which precede the effective date of this rule shall be replaced with the effective date of this rule.

(9) Delete 40 CFR 268.33.

**(10) In 40 CFR 268.40, remove the entry for waste code U202 from the table "Treatment Standards for Hazardous Wastes".**

**(11) In 40 CFR 268, Appendix VII, remove the entry for waste code U202 from Table 1, "Effective Dates of Surface Disposed Wastes (Non-Soil and Debris) Regulated in the LDRs – Comprehensive List".**

*(Solid Waste Management Board; 329 IAC 3.1-12-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3366; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1639; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2435; errata filed May 8, 2003, 9:40 a.m.: 26 IR 3046; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2665)*